

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

KMAC, INC.

and

Case 18-CA-185912

**CONSTRUCTION AND GENERAL
LABORERS LOCAL 563**

ORDER¹

The petition to revoke subpoena duces tecum B-1-UXPOCR, filed by KMAC, Inc., is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.² Further, the Petitioner has failed to establish any other legal basis for

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² In considering the petition to revoke, we have evaluated the subpoena in light of the Region's clarifications in its opposition brief as follows: for pars. 1, 2, and 6, defining "unit work" as "all materials-handling, tending the hopper and pump, moving hoses, installing sound matting, installing Ethofoam and expansion joints, prep work, set-up, tear-down, and cleaning . . . on residential and commercial projects, where the [Petitioner] is hired to install gypsum concrete floors"; prefacing par. 2 with the phrase "documents reflecting the"; limiting par. 3 to contractors performing unit work (or disputed unit work); limiting par. 4 to payroll records of employees performing unit work (or disputed unit work); for par. 9, stating that it is seeking documents reflecting whether the Petitioner's directors, stockholders, owners, members, officers, managers, and supervisors have an ownership interest or a supervisory or management role in Acoustical Sound Floors, Inc.; and, for par. 13, removing the inadvertently included phrase "any other listed entity created or in effect."

Regarding subpoena par. 7, the Petitioner asserts that it does not possess payroll records of its subcontractors' employees who are not employees of the Petitioner. The Petitioner is not required to produce evidence requested in the subpoena that it does not possess, but the Petitioner is required to conduct a reasonable and diligent search for all requested evidence. Further, with respect to requested information not in the Petitioner's possession or control, the subpoena compels the Petitioner to request such information from its subcontractors, if necessary. If the information does not exist, or if the subcontractors decline to provide the

revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., December 22, 2017.

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

information, the Petitioner must affirmatively represent this fact to the Region. See *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 702 n. 10 (2006) (“In responding to a subpoena, an individual is required to produce documents not only in his or her possession, but any documents that he or she had a legal right to obtain,” citing *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984)). Moreover, if the subcontractors do not comply with a request for the information from the Petitioner, nothing would prevent the Region from seeking that information directly from the subcontractors.